

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

3 DONALD R. SCOTT and Civil No. 3:10cv00024
MELISSA J. SCOTT,

Plaintiffs,

GMAC MORTGAGE, LLC,

Defendant. February 24, 2011

TRANSCRIPT OF TELEPHONE HEARING
BEFORE THE HONORABLE B. WAUGH CRIGLER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:

Martin & Raynor
JONATHAN T. WREN
1228 Cedars Court
Charlottesville, VA 22903

For the Defendant:

Troutman Sanders LLP
JASON E. MANNING
222 Central Park Ave.
Suite 200
Virginia Beach, VA 23462

Court Reporter:

Sonia R. Ferris, RPR
U.S. Court Reporter
255 W. Main St. Room 304
Charlottesville, VA 22902
434-296-9284

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 THE COURT: Let me call the case and let's
2 see where we are here.

3 This is 3:10CV24, Donald and Melissa Scott
4 versus GMAC Mortgage, LLC.

5 Mr. Manning is on for the defendant and Mr.
6 Wren is on for the plaintiff.

7 The Court convened this telephonic hearing
8 with a Court Reporter, in light of Mr. Manning's
9 February 21st letter to the Court and Mr. Wren's
10 February 23rd response.

11 I do want to say to Mr. Manning, I would
12 have attempted to accommodate your present schedule, but
13 there were just too many players involved to deal with
14 that at the last minute, so please accept the Court's
15 apologies for not being able to accommodate your request
16 to extend this to 3:00.

17 MR. MANNING: No problem, Judge. I can redo
18 the deposition later.

19 THE COURT: The reason we're here is that
20 the letter raised some issues about information being
21 obtained from Crown Mortgage in which my son is a
22 principle and from what I can glean from the letters,
23 it's historical information about rate sheets back in,
24 what was it, 2006 or '7/? I don't have the dates
25 sitting in front of me.

1 I wanted to find out from the defendant, is
2 there a request for me to recuse myself from the case
3 because, I mean, all of this is news to me and certainly
4 I don't know what position the defendant is taking based
5 on these facts.

6 MR. MANNING: Judge, this is Jason Manning
7 for GMAC Mortgage.

8 It was news to us also. Our concern is not
9 with Your Honor so much as the expert who has, it
10 appears, deliberately attempted to reach out to your
11 son, knowing that you are assigned to the case, and then
12 not disclosing that fact, while still soliciting
13 information from your son, from a time period when GMAC
14 Mortgage, as the expert admits, may have been a
15 competitor with your son's businesses, with locations in
16 Charlottesville.

17 THE COURT: That still doesn't answer my
18 question. Are you asking me to recuse myself from the
19 case?

20 MR. MANNING: Judge, we're not making that
21 request at this point because we are going to file a
22 motion to exclude the expert and we believe that that is
23 improper contact. It appears to have been deliberate by
24 the expert. It has the potential for biasing the jury
25 in this case and we believe it was inappropriate and

1 deliberate by the expert. So at this point, what we're
2 going to do is file the motion and I'm not making a
3 request for Your Honor to recuse himself.

4 THE COURT: That motion will be heard by
5 Judge Moon or whoever is sitting in the case.

6 Who is this case assigned to; Judge Moon?

7 MR. MANNING: That's right.

8 THE COURT: I won't hear the motion
9 whatsoever. Whatever basis you have for that will be
10 what you have to present to the Court. The only
11 question that I needed to address with the parties is
12 whether the defendant is seeking recusal, my recusal,
13 and if so, I was going to put everybody on a briefing
14 schedule for that. But if it only deals with the issue
15 of whether the expert is able to testify and if so, to
16 what extent and so forth, that's going to be up to Judge
17 Moon. That's a part he'll just have to handle.

18 MR. MANNING: As I understand, Judge, the
19 issue is resolved if the expert is excluded. In the
20 event he is not and we end up going to trial --

21 THE COURT: Wait a minute. We've got to
22 deal with this case as it stands and the question I have
23 is whether there's any conflict of interest simply by
24 virtue of -- I guess you'll raise the question if Judge
25 Moon overrules your objection or your motion?

1 MR. MANNING: I'm really not sure I follow
2 you, Judge.

3 THE COURT: You said the issue is resolved.
4 What issue is there to be resolved if you're not moving
5 for my recusal?

6 MR. MANNING: Well, I believe that the
7 expert's contact here and the expert's conduct in
8 contacting your son about something that happened back
9 in 2007, which it invites the question as to why him,
10 Judge, because we're not sure how close they are. It
11 appears they're not very close, but he deliberately
12 reached out to contact him for some unknown reason and
13 then used those rate sheets that your son provided as a
14 basis for his expert report.

15 I think it raises the concern of at least
16 the potential for appearance of impropriety in front of
17 the jury, but that issue need not be briefed if the
18 expert is excluded pursuant to our motion.

19 THE COURT: I'm just not following because
20 it would only come before the jury if for some reason
21 the issue of some relationship is brought up and the
22 question I have is, if you're moving for me to recuse
23 myself, then I will address it in an appropriate
24 fashion. If you're not, then there's nothing for me to
25 do at this time until and unless there is a motion for

1 recusal and if you're seeking to exclude the evidence
2 for some reason that you've formulated, then that's a
3 matter for Judge Moon to resolve one way or the other.

4 Do you agree with that?

5 MR. MANNING: I'm not really sure, Judge. I
6 understand -- that seems reasonable to me. I am not
7 making a motion for you to recuse yourself. I think
8 we're in agreement on that.

Do you agree with that?

21 MR. MANNING: That's what we intend to do,
22 Judge.

23 THE COURT: Mr. Wren, do you want to add
24 anything to the conversation?

25 MR. WREN: At this point, I don't have

1 anything to add, Your Honor.

2 THE COURT: If that's all that these letters
3 did, then there's nothing for me to do and I just wanted
4 to make sure that the record was clear about what these
5 letters were intended to purvey, information, and what
6 they were seeking the Court to do, which is nothing at
7 this time, and whatever motion Mr. Manning wants to file
8 on behalf of GMAC with respect to the inclusion or
9 exclusion of the expert, that's a matter for the trial
10 Court to determine based on the process that he and I
11 developed over the years where he rules on his own
12 motions to exclude evidence.

13 MR. MANNING: Okay, Judge.

14 Just to make sure I'm clear on the record,
15 the letters were driven by what we believe is a serious
16 issue -- though you're right, we're not asking for Your
17 Honor to recuse yourself -- because we believe the
18 impropriety here is by the expert.

19 THE COURT: Mr. Manning, let me just inform
20 you of one thing. I don't think the rules have changed
21 simply because there's electronic filing and the rules
22 say that pleadings and every other thing is not a
23 pleading that's contained in the record of the case. So
24 if it's not to be construed as a pleading in that it's a
25 motion to recuse the Court, then I'm just going to treat

1 it as a communication that I'm not going to respond to
2 because I'm not asked to respond to it. You can do what
3 you wanted to with it with Judge Moon and we'll see what
4 happens afterwards.

5 MR. MANNING: That's, fair, Judge. We just
6 wanted to inform the Court because we believe it's
7 something that shouldn't lie dormant and we will take it
8 up with Judge Moon.

9 THE COURT: Anything further, Mr. Wren?

10 MR. WREN: No, sir.

11 THE COURT: With that, these proceedings are
12 concluded.

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14
15 "I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled
17 matter.

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20 /s/ Sonia Ferris

March 8, 2011

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